

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: :  
SWEIGERT, : Docket #18cv8653  
Plaintiff, : 1:18-cv-08653-VER-SDA  
- against - : New York, New York  
GOODMAN, : December 15, 2021  
Defendant. :  
----- : REMOTE DISCOVERY  
CONFERENCE

PROCEEDINGS BEFORE  
HONORABLE STEWART D. AARON  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

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2 HONORABLE STEWART D. AARON (THE COURT): This is  
3 the matter of Sweigert against Goodman, 18cv8653. This  
4 line is being recorded. This is Magistrate Judge -- this  
5 is Magistrate Judge Aaron, if I could have the parties  
6 identify themselves, please, for the record.

7

8 MR. D. GEORGE SWEIGERT (THE PLAINTIFF): This is  
the plaintiff, D. George Sweigert.

9

10 MR. JASON GOODMAN (THE DEFENDANT): Pro se  
defendant, Jason Goodman.

11

12 THE COURT: Good afternoon. The purpose of this  
conference is to discuss certain discovery issues and I did  
13 review the parties' correspondence that I received prior to  
14 today and I want to first talk about the videos. I saw in  
15 the filing that the defendant made yesterday that with  
16 respect to the videos that were requested by the plaintiff,  
17 there were links provided in the exhibit that was attached  
18 to the letter and those links appeared to me, for the most  
19 part, to match up to the requests. So let me hear from the  
20 plaintiff as to whether, what deficiencies he asserts with  
21 respect to the videos requested?

22

23 THE PLAINTIFF: Well, Your Honor, I haven't  
actually checked those links but I'll take your word  
24 that if those links work they can be substitutes.  
25 However, the point of the matter was that if that's

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2 the title that those videos were given then, and those  
3 links are going to another location to get that video  
4 and the videos aren't, haven't changed at all, then I  
5 suppose that would be acceptable.

6 THE COURT: Okay, Mr. Sweigert, you ought not  
7 take my word for anything, all I indicated was that I  
8 saw there were links that were provided. I admittedly  
9 clicked on one or two, but it's not my job to see  
10 whether the discovery provided to you was adequate. So  
11 unless you tell me otherwise, I am going to take Mr.  
12 Goodman's response as satisfying the obligation that  
13 was imposed upon him.

14 I now want to talk about the videos that were  
15 referenced in the report and recommendation I made to  
16 Judge Caproni. I saw, Mr. Goodman, in your response  
17 of yesterday, that with respect to the videos that  
18 relate to what I refer to as statements four and five,  
19 that those, YouTube took them down or something along  
20 those lines, and I'd like to understand whether you're  
21 telling me that those videos, therefore, are no longer  
22 available to you?

23 THE DEFENDANT: Your Honor, I go to what I  
24 would categorize as great lengths to preserve every  
25 digital document that I create. I've been in the

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2 video production business for three decades. And just  
3 because YouTube takes down a channel or Mr. Sweigert  
4 writes letters to BitChute and other people and files  
5 complaints against my social media properties with the  
6 specific intention of getting them taken down, even  
7 when that happens I preserve copies. And while it is  
8 possible that I may, over the course of thirty years,  
9 have made an error and may have lost some of what I've  
10 created, I do not believe any of the videos in  
11 question have been lost, I have them all, and I have  
12 gone to great lengths to provide them to the plaintiff  
13 while he is simultaneously trying to get them  
14 eliminated from the internet so he can write pleadings  
15 claiming that I deleted them.

16

THE COURT: Okay, so I'm aware that you  
17 previously provided a, in your May 15<sup>th</sup> supplemental  
18 interrogatory responses filed at ECF 274, you  
19 indicated you were sending to Mr. Sweigert a USB  
20 memory stick containing 46.8 gigabytes of video data,  
21 that was in response to request number 2(D), and you  
22 indicated at that time it was mailed to plaintiff's  
23 Nevada City address. In the most recent correspondence  
24 from you, you talk about different amounts of data.  
25 For example, in one part of the letter you sent, of

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2 yesterday, you indicated it was 64 gigabytes on a  
3 thumb drive in the initial discovery phase. But what  
4 I'm trying to get at is the videos that were  
5 referenced in my report and recommendation as not  
6 having been provided to me, were they provided to Mr.  
7 Sweigert on that thumb drive or in any other manner?

8

THE DEFENDANT: So to clarify the thumb drive  
9 issue, it's a 64 gigabyte bucket with 48 gigabytes  
10 worth of material in it. And, yes, that was provided  
11 to Mr. Sweigert, I may have not recalled correctly  
12 when I wrote that thing which address I sent it to,  
13 it's become quite a challenge for me to keep track of  
14 Mr. Sweigert's mailing addresses and where I am  
15 supposed to produce this material to. If it was sent  
16 to the Nevada City address, then that would explain  
17 why he hasn't received it because, as you may recall  
18 from our previous conferences, so far every email  
19 address he's given me, when I check with the post  
20 office they say it's not his address, and the stuff  
21 gets lost or returned, or whatever.

22

So given the facts you've just reminded me of  
23 there, it is possible that Mr. Sweigert doesn't have  
24 that thumb drive. But it was sent and I do believe it  
25 contained every video that I am aware of that has

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2 anything to do with him or anything that he has asked  
3 for. And I will double check but I thought I had  
4 included links in my response that satisfied what you  
5 were looking for, Your Honor. I have no interest in  
6 blocking any access to any video I have ever created  
7 and I even probably in this letter that he didn't get,  
8 I said this thumb drive contains everything you're  
9 looking for and if there's anything missing, there's  
10 no need to file a pleading, I'll give you whatever you  
11 want. I, he can scrutinize any video I've ever made, I  
12 think the question is why is Mr. Sweigert going to  
13 such lengths to delete my video channels. Even when I  
14 create an evidence channel on BitChute, he contacted  
15 BitChute and told them that this was a copyright  
16 infringement, that was a deception. Using his videos  
17 as evidence in this lawsuit is not a copyright  
18 infringement, it is a fair use of the video.

19 THE COURT: Okay, Mr. Sweigert, in a letter,  
20 or to be more precise, in a memorandum and declaration  
21 you filed with the Court on June the 2<sup>nd</sup> of this year  
22 at ECF 281 and 282, first of all, in the memorandum at  
23 page 7 you stated that a USB jump drive that contained  
24 137 video files in the MP4 format was received via  
25 postal authorities, and then in the declaration that

1  
2 accompanied it, it indicated the USB contained  
3 approximately 43.5 gigabytes of information. So I  
4 assume you are not saying that you didn't get that  
5 jump drive, what you had previously been saying, that  
6 there were videos that were missing from it, but my  
7 question for you, Mr. Sweigert is do you contend that  
8 that thumb drive did not contain the videos that were  
9 referenced in my report and recommendation that I  
10 didn't have access to?

11 THE PLAINTIFF: Well, okay, there's some  
12 compounded things here and after I answer this  
13 question I would like to update the Court on all the  
14 links that I checked while the defendant was speaking,  
15 the links that supposedly work. So I would like to address  
16 that after this.

17 So the video, the videos that we're talking about,  
18 so there's two jump drives, if you want to think of it that  
19 way, the one that we're talking about that the declaration  
20 was written about on June 2<sup>nd</sup>, that it's just a curiosity  
21 that there was approximately 66 videos that were my creation  
22 on a deactivated YouTube channel. So for whatever reason,  
23 the defendant decided to additionally put 66 videos on that  
24 jump drive which were not his creation, which are not  
25 subject to this litigation, which are irrelevant. So that

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2 leaves I think 40 videos approximately and the videos that I  
3 was requesting that we, the question about these links, we  
4 can deal with that in a second, those were the videos that  
5 do not appear in those 44. So the first jump drive of June  
6 2<sup>nd</sup> were not inclusive of the videos that I requested for  
7 the second discovery responses, second jump drive, if you  
8 will, and those are the questions that I had.

9 THE COURT: All right, I'm going to just restate  
10 my question so we're clear. There were certain videos that  
11 I, personally, did not have access to when I issued my  
12 report and recommendation on the summary judgment motion. I  
13 identified them as consisting of relating to statements  
14 four, five, six, seven, eight and nine.

15 THE PLAINTIFF: Right.

16 THE COURT: Mr. Sweigert, do you have, do you have  
17 those videos?

18 THE PLAINTIFF: I don't know. I really, I'm not  
19 trying to be smart-alecky or not. I think if The Trolls of  
20 Mt. Shasta was one of them, I do have that video, that I'm  
21 pretty sure of. The second one, something about, I don't  
22 know, I would have to double check.

23 THE COURT: Okay, because I construed the request  
24 that you made to Mr. Goodman, pursuant to my Court Order, as  
25 being the videos that were you, and I'm going to use your

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2 word, missing, the ones that hadn't been provided to you,  
3 and you hadn't listed those and, therefore, it led me to  
4 believe that you have them. So and that's going to be,  
5 that's the assumption that I'm proceeding under. You wanted  
6 to say something else about Mr. Goodman's response that you  
7 received yesterday? I know it was dated earlier, it was  
8 dated December 1<sup>st</sup>.

9

THE PLAINTIFF: Well the only thing I think for,  
10 to provide absolute clarity, is this issue about BitChute  
11 and videos that are on BitChute, and evidence repositories  
12 that are created, all that content is my content, it has  
13 nothing to do with any potential videos that would have  
14 content of defamation and slander. So when Mr. Goodman says  
15 that I'm actively trying to defeat his ability to have  
16 videos or produce videos, if we're talking about him  
17 producing my videos, which I already have copies of, and him  
18 taking those videos and putting them on yet another  
19 (indiscernible) social media property, it's somewhere out in  
20 the internet, and it's all my content, I own it, and he puts  
21 it up, I have it taken down and he says I'm obstructing, I'm  
22 causing problems, I think that's just an argument. I mean it  
23 reveals itself.

24

So I just wanted to clear that up for the Court  
25 that this issue about BitChute is not about video content

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2 that he owns or he's created, it's about video content that  
3 I own and I created.

4 THE COURT: All right. So from my perspective,  
5 we're done on videos. The --

6 THE RESPONDENT: Your Honor, may I address  
7 that?

8 THE COURT: No, you may not. This is all back  
9 and forth between the two of you and having nothing to  
10 do with the issues in my case. I'm dealing with the  
11 issues in my case. So as far as I'm concerned, I'm  
12 done on videos. I did see that, Mr. Sweigert, you put  
13 in additional requests for videos which is not what the  
14 Court intended, and I am upholding the objections that Mr.  
15 Goodman made to them. And based upon what's been produced,  
16 I think you have the videos that you requested and,  
17 obviously, whatever questions you want to ask Mr. Goodman at  
18 his upcoming deposition about those videos, you certainly  
19 are free to ask.

20 I want to turn next to the issue of the  
21 deposition. I have been advised by the Court that due to  
22 extant Covid protocols, we are not holding depositions at  
23 the courthouse. Pre-Covid that is something that was done,  
24 but I'm told that I can't do that. So, therefore, I'm going  
25 to order that the deposition proceed remotely and, Mr.

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2 Sweigert, it is your option, it will be at your expense and,  
3 therefore, your option, to do it by telephone. On the  
4 telephone will be, or would be if you do it by telephone,  
5 you, me, Mr. Goodman and a court reporter who is hired at  
6 your expense. Alternatively, Mr. Sweigert, there are video  
7 deposition services out there post pandemic that set up a  
8 screen and would have all of us on video, and there would be  
9 somebody who is recording it. They are professional  
10 videographers using videoconferencing technology, and  
11 that's what the rules require and that's what I am going  
12 to require. So I'm going to give you a week to decide  
13 whether you want to do it by telephone or whether you want  
14 to do it by videoconferencing technology using a  
15 videoconferencing deposition firm. These firms provide  
16 both the court reporter, as I understand it, as well as  
17 the videographer, and both the court reporter and the  
18 videographer are certified to perform those functions.

19                   And so, Mr. Goodman, you received the letter, as  
20 I did, from Mr. Sweigert, setting forth the proposed  
21 dates, February 22<sup>nd</sup>, February 23<sup>rd</sup>, February 24<sup>th</sup> and  
22 February 25<sup>th</sup>, which of those dates would you like to  
23 choose?

24                   THE DEFENDANT: That's posed to me, Your Honor,  
25 or to Mr. Sweigert?

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2 THE COURT: Mr. Sweigert --

3 THE DEFENDANT: The 22<sup>nd</sup>.

4 THE COURT: Let me finish. Mr. Sweigert told  
5 me his available dates in a letter dated December the  
6 9<sup>th</sup> and I assume you received a copy of this --

7 THE DEFENDANT: Yes.

8 THE COURT: And it lists February 22<sup>nd</sup>, 23<sup>rd</sup>,  
9 34<sup>th</sup> and 25<sup>th</sup> and I'm asking you to pick one of those  
10 dates.

11 THE DEFENDANT: The 22<sup>nd</sup>, please, sir.

12 THE COURT: Okay. So it will be February the  
13 22<sup>nd</sup> and Mr. Sweigert, within seven days you'll advise,  
14 you'll file a letter indicating whether it's going to  
15 be by telephone or by, you know, video. And once you  
16 advise that I'll enter an order requiring you a  
17 certain number of days in advance to provide to Mr.  
18 Goodman and to the Court either A) dial-in  
19 information, again, court reporting services should be  
20 able to make a dial-in number available if you choose  
21 telephone, and if you choose videoconferencing,  
22 obviously that court reporting service can provide a  
23 link that both Mr. Goodman and I, and the court  
24 reporter and the videographer can, can log in to for  
25 lack of a better term.

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2 Any questions about that, Mr. Sweigert?

3 THE PLAINTIFF: Just to understand, both  
4 options, it's a, I make the private arrangements with  
5 a private carrier, the Court's not involved in that,  
6 I would make the arrangements?

7 THE COURT: That's correct.

8 THE PLAINTIFF: Okay.

9 THE COURT: But there are certifications that  
10 are associated with this type of work.

11 THE PLAINTIFF: Yes, I understand.

12 THE COURT: There are firms out there that do  
13 this kind of thing. And obviously the New York based  
14 ones, there are many, many and I am confident, if  
15 you're not familiar with them, I may have discussed  
16 these with you in the past and if I haven't, for both  
17 sides, the New York Legal Assistance Group, they're  
18 referred to as NYLAG, N-Y-L-A-G, and the contact  
19 information for NYLAG is available on the Court's  
20 website, they give advice to pro se litigants and I am  
21 confident that NYLAG would be able to provide you  
22 information if you didn't have otherwise access to it  
23 as to certified firms that that service, court  
24 reporters as well as videographers.

25 THE PLAINTIFF: That sounds great, Your Honor,

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2 that's how I'll proceed, thank you.

3 THE COURT: All right, so February the 22<sup>nd</sup> it  
4 is. So that's all that I wanted to cover. Mr.  
5 Sweigert, I saw you had other things in correspondence  
6 to me so I'll give you a brief opportunity to raise  
7 whatever it is you want to raise and then, Mr. Goodman,  
8 I'll obviously hear from you. So, Mr. Sweigert, go ahead.

9 THE PLAINTIFF: Well I don't want to belabor  
10 anything. I think, just on the one point of my mailing  
11 address, my mailing address is South Dakota. I went to  
12 great expense to get this mailbox really as a courtesy to  
13 Mr. Goodman, so that's where items should be sent and I've  
14 been really clear about that. And so all I can tell you  
15 is I didn't get anything. So I think that's the issue on  
16 the mailing and I think that clears things up on this end.  
17 I don't think there is any reason to go forward.

18 I was in discussions in email back and forth  
19 with Google's legal staff and Mr. Goodman about the  
20 possibility of a Rule 45 subpoena to get some information  
21 from Google, the Google account at YouTube of the  
22 Jason Goodman account. And I know in the past the  
23 Court has said that if you're seeking subpoenas, the  
24 subpoena is really something that the Clerk of the  
25 Court stamps off and takes care of, but I do have an

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2 interest in continuing working things out with Google  
3 and perhaps getting a valid Court issued subpoena to  
4 get certain information from Google on that YouTube  
5 account. And I would be interested to find out the  
6 Court's opinion on this matter.

7

THE COURT: Well my opinion is discovery is  
closed. Let me understand what it is that you're  
seeking from Google. You told me you have the videos  
and that the links work, what is it that you're  
seeking to get from Google outside the discovery  
period? There is a mechanism through a motion to try  
to obtain discovery outside of the expired period,  
there are certain standards that must be met. And what  
I want to understand is what is it that you're seeking  
from Google?

17

THE PLAINTIFF: Well, if a reporter at *The New York Times* wrote an article on a word processor saved  
that file, those are the raw files we're talking  
about, they're just raw computer files. So when Mr.  
Goodman sends me these files, they're raw computer  
files. Now when the actual story is printed in *The New York Times*, there might be a headline, there might be  
a caption to a photo, things of that nature. And some  
of these raw files when they're sent to Google, Mr.

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2 Goodman's added headlines and video descriptions that  
3 in themselves contain defamatory information. So that  
4 was my interest in getting a complete totality of  
5 understanding the context of this electronic file was  
6 published in this forum, this is how it appeared, this  
7 is the headline that was used, this is the video  
8 description that was used, here's the thumbnail that  
9 appeared, so it was really just a contextual thing to  
10 have a complete picture of how these videos were  
11 presented to the public.

12 THE COURT: Okay. All I can say is if you  
13 want to try to subpoena Google, you can make a written  
14 motion and, again, you could speak with NYLAG, if you  
15 like. Under Rule 16(b) of the Federal Rules of Civil  
16 Procedure, you have to make a showing as to good cause  
17 to reopen discovery and that the discovery sought is  
18 relevant and proportional to the needs of the case. I  
19 should point out, even if I were to grant you  
20 permission to serve a subpoena, Google would have the  
21 right as a third party to assert objections to the  
22 subpoena, and under Rule 45 one of the things they  
23 have the right to do is to cost shift. They get to  
24 say, you know what, we have to hire people to do this,  
25 et cetera, and we'll do this so long as Mr. Sweigert

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2 reimburses our expenses of dollars X. So I just point  
3 that out as something for you to be aware of should  
4 you choose to file such a motion, that just because  
5 permission is granted to issue the subpoena, doesn't  
6 mean Google needs to comply with it, it means Google  
7 gets to assert objections and seek to cost shift.

8 Did you have anything else -- did you have  
9 anything else, Mr. Sweigert?

10 THE PLAINTIFF: Thank you for the explanation,  
11 I understand that, and I don't have anything else,  
12 Your Honor.

13 THE COURT: All right. Mr. Goodman, we're  
14 sticking to the discovery in this case, do you have  
15 anything that you would like to raise with respect to  
16 the discovery in this case?

17 THE DEFENDANT: Well, I just want, you've  
18 mentioned here that Google could object to a subpoena  
19 request, can I object to a subpoena request?

20 THE COURT: Yes, Mr. Goodman, you would be  
21 able to, if a motion were made by Mr. Sweigert, you  
22 would have the opportunity to object to the subpoena  
23 being issued, absolutely.

24 THE DEFENDANT: Okay, so I think it's  
25 important in consideration of the possible motion that

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2 we're discussing, that the Court be made aware that  
3 Mr. Sweigert was not able to determine if he had this  
4 material that he's asking for, he doesn't know. And I  
5 believe it's because so much of his time is occupied  
6 with bombarding me with emails that are unrelated to  
7 this case, interfering with other cases, harassing my  
8 family members and doing all kinds of things that are  
9 way outside the scope of anything having to do with  
10 this, I would say that this, you know, proposed  
11 subpoena to Google falls into that category. And I  
12 would like to request the Court, I don't want to make  
13 any more filings, you told us not to file anything, so  
14 I would like to make a specific request --

15 THE COURT: Mr. Goodman, I never told you not  
16 to file anything.

17 THE DEFENDANT: Ah, sorry, I misunderstood.

18 THE COURT: I don't know where you got that  
19 from.

20 THE DEFENDANT: I misunderstood.

21 THE COURT: If a motion is made, you  
22 absolutely are entitled to respond to it, if you have  
23 a motion to make, you should make a motion.

24 THE DEFENDANT: Very good, thank you, sir.

25 THE COURT: Okay? Anything else relating to

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2 discovery in this case, Mr. Goodman?

3 THE DEFENDANT: I presume discovery is closed  
4 and I have no further questions.

5 THE COURT: It's closed except for your  
6 deposition.

7 THE DEFENDANT: Right.

8 THE COURT: Yes, okay. Very well, so you can  
9 expect to see an order setting the February 22<sup>nd</sup> date  
10 for the deposition as well as requiring Mr. Sweigert  
11 within seven days to advise the Court as to the method  
12 by which he, the remote method by which, by which he  
13 will take the deposition. Thank you very much and this  
14 matter is adjourned.

15 THE DEFENDANT: Sorry, I have one further  
16 question, Your Honor.

17 THE COURT: Did we lose Mr. Sweigert?

18 THE PLAINTIFF: I'm still here, Your Honor.

19 THE COURT: Okay, go ahead, Mr. Goodman,  
20 relating to discovery in this case, go ahead.

21 THE DEFENDANT: Relating to this case. Do I  
22 have, can the Court -- I guess I don't want to ask you  
23 for legal advice, I'm not trying to do that, I think I  
24 need to contact an attorney. I just, I need a  
25 restraining order against Mr. Sweigert, he does

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2 nothing but harass me all day. That's all I have to  
3 say.

4 THE COURT: All right, this matter is  
5 adjourned, thank you.

6 (Whereupon the matter is adjourned.)

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C E R T I F I C A T E

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5           I, Carole Ludwig, certify that the foregoing  
6 transcript of proceedings in the United States District  
7 Court, Southern District of New York, Sweigert v. Goodman,  
8 et al., Docket #18cv8653, was prepared using digital  
9 transcription software and is a true and accurate record of  
10 the proceedings.

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Signature Carole Ludwig

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Date: December 30, 2021

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